

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5572 OF 1998

1. Shri Devdas Parbati Salunkhe)
age 32 yrs. Occu. Agriculture,)

2. Shri Narayan Parbati)
Salunkhe, age 42 yrs., Occ)
Agriculture)

3. Shri Sampat Parbati)
Salunke, Age 45 yrs.)

4. Shri Eknath Alias Vyankat)
Paroati Salunkhe, Aged 38 yrs.)
all residing at Nagthane, Tal.)
& Dist. Satara.)

)...Petitioners.

V/s

1. The Special Land Acquisition)
Officer No.4, Dist. Satara)

2. The Collector, Dist. Satara)

3. The District Re-Settlement)
Officer, Satara, Dist. Satara.)

4. Divisional Commissioner,)
Pune Division, Pune.)

5. The State of Maharashtra)

) ...Respondents

Mr. Nitin Jamdar for the petitioners

Ms. S.S. Bhende, AGP for the State.

**CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.**

DATE: 13th October, 2005.

JUDGMENT: (Per V.M. Kanade, J.)

1. The petitioners are challenging acquisition proceedings initiated by the respondent No.1 under the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1986 (hereinafter called "the Rehabilitation Act") read with the provisions of the Land Acquisition Act, 1894 (hereinafter called "the Acquisition Act").

2. The only grievance of the petitioners is that the individual holding of the petitioners was less than 2 Hectares and 42R and, as such, the land of the petitioners was not liable to be acquired. The learned Counsel appearing on behalf of the petitioners submitted that the petitioners' father died in the year 1962 and left behind some ancestral and self acquired land and, after his death, the name of petitioner No.3 was entered in the record as a Manager since he was the eldest son and, till today, the property stands in the name of petitioner No.3. It is the contention of the learned Counsel for the petitioners that on 20/10/1979 a written partition deed was effected and the property was divided amongst them in terms of the said partition deed. In the said partition deed, properties which were mentioned therein were distributed amongst 4 bothers. It is

contended that, therefore, the individual share and holding of the petitioners was less than 2 Hectares and 42R. It is contended that, thereafter, a civil suit was filed in the Court of Civil Judge, Junior Division, Satara by petitioner Nos. 1 and 2 against petitioner Nos. 3 and 4 and the suit was decreed in favour of petitioner Nos. 1 and 2. It is submitted that, in the said suit, there is a finding that the agricultural land was partitioned between the petitioners.

3. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the petitioners. The Division Bench of this Court in the case of Shivgonda Balgonda Patil and others vs The Director of Resettlement and others reported in **AIR 1992 Bombay 72** has held that unregistered partition deed, at the most, can be treated as a family arrangement and cannot form the basis for deciding the individual holding as defined under the Maharashtra Resettlement of Project Displaced Persons Act, 1976 (hereinafter called "the Resettlement Act") Though the said judgment was delivered in respect of the Resettlement Act, which was repealed and was substituted by the Rehabilitation Act, the provisions contained in the repealed Act and in the new Act i.e.

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Rehabilitation Act are more or less analogous to each other and, therefore, the ratio of the said judgment will squarely apply to the facts of the present case. The contention of the petitioners that on account of a written partition deed, the property was divided between the parties, therefore, cannot be accepted. As regards the second contention raised by the learned Counsel appearing on behalf of the Petitioners regarding decree passed by the Civil Judge Junior Division, Satara is concerned, the same will not be of any assistance to the petitioners. A perusal of the order indicates that the suit mainly was filed for relief of declaration and perpetual injunction against the defendants and the said suit was decreed in favour of the plaintiffs. Any observation made, therefore, regarding partition between the parties in the said order will not take the case of the petitioners any further. In the result, there is no merit in the submission made by the learned Counsel appearing on behalf of the petitioners.

4. Writ Petition is accordingly dismissed.

(R.M.S. KHANDEPARKAR, J.)

(V. M. KANADE, J.)